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CDJ

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MADISON RAUSCH, a minor, by and
through her Parents and Natural
Guardians, REGINA RAUSCH and
CHRISTOPHER RAUSCH, and
REGINA RAUSCH and
CHRISTOPHER RAUSCH, in their own
right

Plaintiffs

vs.

NEMOURS/ALFRED I. duPONT
HOSPITAL FOR CHILDREN and
THE NEMOURS FOUNDATION

Defendants

17 2527

NOTICE OF REMOVAL

(28 U.S.C. § 1446)

C.A. No.:

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA:**

Defendants, Nemours/Alfred I. DuPont Hospital for Children and The
Nemours Foundation file this Notice of Removal of the said case from the Court
of Common Pleas of Philadelphia County, Pennsylvania, in which it is now
pending, to the United States District Court for the Eastern District of
Pennsylvania, and in support thereof avers as follows:

1. Nemours/Alfred I. DuPont Hospital for Children and The Nemours
Foundation (collectively referred to herein as "Nemours") are Defendants in the
civil action brought by Writ of Summons on April 20, 2017, and by Complaint filed
on May 25, 2017, in the Court of Common Pleas of Philadelphia County,
Pennsylvania. Pursuant to provisions of Section 1441 and 1446 of Title 28 of the
United States Code, Nemours removes this action to the United States District

Court for the Eastern District of Pennsylvania, which is the judicial district in which the action is pending.

2. The grounds for removal of this action are:

a. On May 17, 2017, Plaintiffs' counsel sent defense counsel a courtesy copy of a Complaint that was filed on May 25, 2017, in the Court of Common Pleas of Philadelphia County, Pennsylvania, April Term, 2017, No. 001644.

b. There is complete diversity of citizenship between the Plaintiffs and Nemours because:

i. The Plaintiffs are citizens of the State of Pennsylvania, and reside at 177 Rice Drive, Morrisville, Pennsylvania, in Bucks County, Pennsylvania.

ii. Defendant, The Nemours Foundation is a corporation organized and incorporated under the laws of the State of Florida, with its principal place of business at 10140 Centurion Parkway, Jacksonville, Florida.

iii. Defendant, Nemours/A.I. DuPont Hospital for Children is not a corporation. A.I. DuPont Hospital for Children is a hospital that is owned and operated by Nemours and is located at 1600 Rockland Road, Wilmington, Delaware.

c. More than \$75,000, exclusive of interest and costs, is in controversy in this action.

3. This Court would have had original subject matter jurisdiction of this action under the provisions of 28 U.S.C. § 1332 if the action had originally been brought in federal court. Therefore, removal is proper under 28 U.S.C. § 1441(a).

4. Removal of this case on the basis of diversity of citizenship is not precluded by the provisions of Section 1441(b) of Title 28 of the United States Code because none of the parties served as Defendants is a citizen of the State of Pennsylvania, the State in which this action was brought.

5. This Notice of Removal is timely under Section 1446(b) of Title 28 of the United States Code because a courtesy copy of the Complaint was sent to defense counsel on May 17, 2017, and the Complaint was filed on May 25, 2017. This Notice of Removal is filed within 30 days of the forwarding of the courtesy copy and the filing of the Complaint and less than one year after the commencement of this action. The filing of a Writ of Summons (and an attached Civil Cover Sheet) do not commence the time for filing a Notice of Removal when the citizenship of the parties and the amount in controversy to support removal are not evident from the filings. *Sprague v. ABA*, 166 F.Supp. 2d 206, 209 (E.D. Pa. 2001); *Pennco Machine, Inc. v. Tornos Techs. U.S. Corp.*, 169 F.Supp. 2d 349, 351 (E.D. Pa. 2001). Here, the Writ of Summons lists the residence of the Plaintiffs but not their citizenship. *Sprague*, 166 F.Supp.2d at 209 (remand denied where Writ listed only residence of parties, as residence is not necessarily the same as the state of citizenship). Similarly, the Civil Cover Sheet lists the amount in controversy as over \$50,000, a jurisdictional limit established for the filing of the case in the state courts of Pennsylvania, but does not identify the limits that would be applicable for filing in federal court. *Id.*; *Pennco* at 351 (remand denied as amount in controversy was not met based on Civil Cover Sheet). Hence, Nemours was not on notice that the case could be removed until it received the Complaint, and its Notice of Removal is timely.

6. All state-court papers served on Nemours, consisting of the Writ of Summons, Civil Cover Sheet and Complaint (email attaching courtesy copy and time-stamped copy), are attached hereto as Exhibit A.

7. Nemours will provide immediate notice of the filing of this Notice to Plaintiffs as required by 28 U.S.C. §1446(d).

8. Nemours will file a certified copy of this Notice with the Prothonotary of the Court of Common Pleas of Philadelphia County as required by 28 U.S.C. § 1446(d).

WHEREFORE, Nemours requests that the action presently pending against it in the Court of Common Pleas of Philadelphia County be removed to the United States District Court for the Eastern District of Pennsylvania.

McCANN LAW, LLC

Attorneys for Defendants

By: 

Sara Lynn Petrosky, Esquire
Attorney I.D. No. 50316
McCann Law, LLC
1800 J.F.K. Boulevard
Suite 1812
Philadelphia, PA 19103
(215) 568-1133

Dated: 6-5-17

Court of Common Pleas of Philadelphia County
Trial Division**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)

APRIL 2017**001644**

E-Filing Number: 1704026376

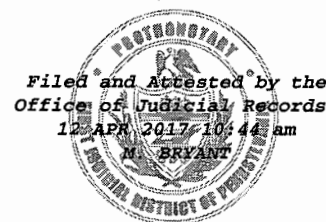
PLAINTIFF'S NAME MADISON RAUSCH		DEFENDANT'S NAME NEMOURS/ALFRED I. DUPONT HOSPITAL FOR CHILDREN	
PLAINTIFF'S ADDRESS 177 RICE DRIVE MORRISVILLE PA 19067		DEFENDANT'S ADDRESS 1600 ROCKLAND ROAD WILMINGTON DE 19803	
PLAINTIFF'S NAME REGINA RAUSCH		DEFENDANT'S NAME THE NEMOURS FOUNDATION	
PLAINTIFF'S ADDRESS 177 RICE DRIVE MORRISVILLE PA 19067		DEFENDANT'S ADDRESS 10140 CENTURION PARKWAY NORTH JACKSONVILLE FL 32256	
PLAINTIFF'S NAME CHRISTOPHER RAUSCH		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS 177 RICE DRIVE MORRISVILLE PA 19067		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS 3	TOTAL NUMBER OF DEFENDANTS 2	COMMENCEMENT OF ACTION <input type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2M - MALPRACTICE - MEDICAL			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		<div style="text-align: center;"> FILED PRO PROTHY APR 12 2017 M. BRYANT </div>	
		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>MADISON RAUSCH , REGINA RAUSCH ,</u> <u>CHRISTOPHER RAUSCH</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY ELIA ROBERTSON		ADDRESS KLINE & SPECTER 1525 LOCUST STREET PHILADELPHIA PA 19102	
PHONE NUMBER (215) 772-1363	FAX NUMBER none entered		
SUPREME COURT IDENTIFICATION NO. 321277		E-MAIL ADDRESS elia.robertson@klinespecter.com	
SIGNATURE OF FILING ATTORNEY OR PARTY ELIA ROBERTSON		DATE SUBMITTED Wednesday, April 12, 2017, 10:44 am	

FINAL COPY (Approved by the Prothonotary Clerk)

KLINE & SPECTER, P.C.

By: Thomas R. Kline, Esquire
Amy L. Guth, Esquire
Elia A. Robertson, Esquire
Attorney I.D. No. 28895 / 44204 / 321277
1525 Locust Street, 19th Floor
Philadelphia, PA 19102
215-772-1000
215-735-5827 (facsimile)

Attorneys for Plaintiffs



MADISON RAUSCH, a minor, by and through
her Parents and Natural Guardians, REGINA
RAUSCH and CHRISTOPHER RAUSCH, and
REGINA RAUSCH and CHRISTOPHER
RAUSCH, in their own right
177 Rice Drive
Morrisville, Pennsylvania 19067

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY

, 2017

v.

NO.

NEMOURS/ALFRED I. DUPONT
HOSPITAL FOR CHILDREN
1600 Rockland Road
Wilmington, Delaware 19803

and

THE NEMOURS FOUNDATION
10140 Centurion Parkway North
Jacksonville, Florida 32256

PRAECIPE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons against the above-named defendants in the above captioned matter.

KLINE & SPECTER, P.C.

THOMAS R. KLINE, ESQUIRE
AMY L. GUTH, ESQUIRE
ELIA A. ROBERTSON, ESQUIRE
Attorneys for Plaintiffs

Case ID: 170401644

CP.97

Commonwealth of Pennsylvania
CITY AND COUNTY OF PHILADELPHIA

SUMMONS
CITACION

Madison Rausch, a minor, by and through her
Parents and Natural Guardians, Regina Rausch
and Christopher Rausch, and Regina Rausch
and Christopher Rausch, in their own right
177 Rice Drive, Morrisville, PA 19067

COURT OF COMMON PLEAS

Filed and Attested by the
Office of Judicial Records
12 APR 2017 10:44 am
M. BRYANT

No. _____

v.s.

Nemours/Alfred I. duPont Hospital for
Children, et al.

To⁽¹⁾

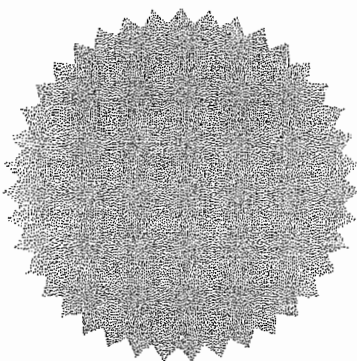
NEMOURS/ALFRED I. DUPONT
HOSPITAL FOR CHILDREN
1600 Rockland Road
Wilmington, DE 19803

THE NEMOURS FOUNDATION
10140 Centurion Parkway North
Jacksonville, FL 32256

You are notified that the Plaintiff⁽²⁾*Usted esta avisado que el demandante⁽²⁾*

Madison Rausch, a minor, by and through her Parents and Natural Guardians, Regina Rausch
and Christopher Rausch, and Regina Rausch and Christopher Rausch, in their own right

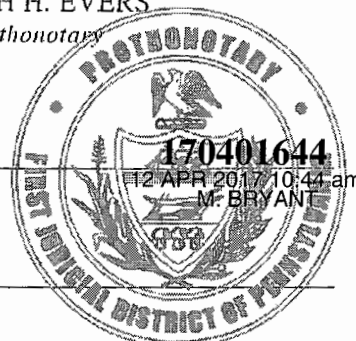
Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.



JOSEPH H. EVERS
Prothonotary

By _____

Date _____

⁽¹⁾ Name(s) of Defendant(s)⁽²⁾ Name(s) of Plaintiff(s)

COURT OF COMMON PLEAS

_____ Term, 20 17 No. _____

Madison Rausch, a minor, by and through her
Parents and Natural Guardians, Regina Rausch
and Christopher Rausch, and Regina Rausch and
Christopher Rausch, in their own right
177 Rice Drive, Morrisville, PA 19067

vs.

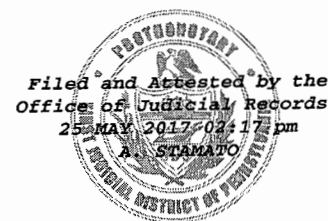
Nemours/Alfred I. duPont Hospital for Children, et
al.

SUMMONS

KLINE & SPECTER PC

ATTORNEYS AT LAW

By: Thomas R. Kline, Esquire
 Amy L. Guth, Esquire
 Elia A. Robertson, Esquire
 Attorney I.D. No. 28895 / 44204 / 321277
 1525 Locust Street, 19th Floor
 Philadelphia, PA 19102
 215-772-1000
 215-735-5827 (facsimile)
 Attorneys for Plaintiffs



MADISON RAUSCH, a minor, by and through
 her Parents and Natural Guardians, REGINA
 RAUSCH and CHRISTOPHER RAUSCH, and
 REGINA RAUSCH and CHRISTOPHER
 RAUSCH, in their own right
 177 Rice Drive
 Morrisville, Pennsylvania 19067

v.

NEMOURS/ALFRED I. DUPONT
 HOSPITAL FOR CHILDREN
 1600 Rockland Road
 Wilmington, Delaware 19803

and

THE NEMOURS FOUNDATION
 10140 Centurion Parkway North
 Jacksonville, Florida 32256

COURT OF COMMON PLEAS
 PHILADELPHIA COUNTY

CIVIL ACTION -- MEDICAL
 PROFESSIONAL LIABILITY

APRIL, 2017

NO. 001644

NOTICE TO DEFEND

"NOTICE"

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CAN NOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA COUNTY BAR ASSOCIATION
 LAWYER REFERRAL & INFORMATION SERVICE
 1101 Market Street, 11th Floor, Philadelphia, PA 19107
 Telephone: 215-238-6300

"AVISO"

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACIÓN DE LICENCIADOS DE PHILADELPHIA
 SERVICIO DE REFERENCIA E INFORMACIÓN LEGAL
 1101 Market Street, 11th Floor, Philadelphia, PA 19107
 Teléfono: 215-238-6300

KLINE & SPECTER P.C.
ATTORNEYS AT LAW

By: Thomas R. Kline, Esquire
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177 Rice Drive
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HOSPITAL FOR CHILDREN
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10140 Centurion Parkway North
Jacksonville, Florida 32256

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY

APRIL, 2017

NO. 001644

COMPLAINT

Plaintiffs, Regina Rausch and Christopher Rausch, as Parents and Natural Guardians of Madison Rausch, a minor, and Regina Rausch and Christopher Rausch, in their own right, by and through their undersigned counsel, Kline & Specter, P.C., hereby bring this medical malpractice action against Defendants, Nemours/Alfred I. duPont Hospital for Children and The

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Nemours Foundation, based upon the predicate facts, allegations of negligence, and causes of action set forth below.

PARTIES

1. Plaintiff, Madison Rausch, a minor ("Minor-Plaintiff"), is a citizen and resident of the Commonwealth of Pennsylvania.

2. Plaintiffs, Regina Rausch and Christopher Rausch, are citizens and residents of the Commonwealth of Pennsylvania, residing therein at 177 Rice Drive, Morrisville, Pennsylvania 19067.

3. Plaintiffs, Regina Rausch and Christopher Rausch, are the Parents and Natural Guardians of Minor-Plaintiff, Madison Rausch.

4. At all times relevant hereto, Defendant, Nemours/Alfred I. duPont Hospital for Children a/k/a A.I. duPont Hospital for Children ("A.I. duPont") was a corporation or other jural entity, organized and existing under and by virtue of the laws of the State of Delaware, with a business address located at 1600 Rockland Road, Wilmington, Delaware 19803. The claims asserted against this Defendant are for corporate negligence and for the professional negligence of its actual, apparent, and/or ostensible agents, servants, and/or employees as stated more fully herein. See Certificate of Merit for Alfred I. duPont Hospital for Children, attached hereto as Exhibit "A" pursuant to Pa. R. C. P. 1042.9.

5. At all times relevant hereto, Defendant A.I. duPont was a parent entity, parent corporation, associated and/or affiliated corporation, member corporation, subsidiary corporation and/or other jural entity of The Nemours Foundation, and was engaged in rendering and/or supervising the provision of medical care and treatment to Minor-Plaintiff within the scope of its

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aforementioned relationship with The Nemours Foundation. Defendant A.I. duPont was organized for the purpose of rendering and/or supervising the provision of medical care and treatment to patients such as Minor-Plaintiff.

6. At all times relevant hereto, Defendant, The Nemours Foundation ("Nemours") was a corporation or other jural entity, organized and existing under and by virtue of the laws of Delaware, with a corporate headquarters business address at 10140 Centurion Parkway, Jacksonville, Florida 32250, and owning and operating Nemours/Alfred I. duPont Hospital for Children at 1600 Rockland Road, Wilmington, Delaware 19803, as well as owning and operating two medical practice outpatient facilities in Philadelphia, Pennsylvania at 833 Chestnut Street, Suite 300, Philadelphia, Pennsylvania 19107 and 1015 Chestnut Street, Suite 601, Philadelphia, Pennsylvania 19107. The claims asserted against this Defendant are for corporate negligence and for the professional negligence of its actual, apparent, and/or ostensible agents, servants, and/or employees as stated more fully herein. *See* Certificate of Merit for The Nemours Foundation, attached hereto as Exhibit "B" pursuant to Pa. R. C. P. 1042.9.

7. At all times relevant hereto, Defendant Nemours was a parent entity, parent corporation, associated and/or affiliated corporation, member corporation, subsidiary corporation and/or other jural entity of Defendant A.I. duPont, and was engaged in rendering and/or supervising the provision of medical care and treatment to Minor-Plaintiff within the scope of its aforementioned relationship with Defendant A.I. duPont. Defendant Nemours was organized for the purpose of rendering and/or supervising the provision of medical care and treatment to patients such as Minor-Plaintiff.

8. Specifically and according to The Nemours Foundation website, the "Thomas

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Jefferson University Hospital/duPont Children's Health Program offers primary and specialty pediatric care adjacent to the Thomas Jefferson University Hospital center city campus in Philadelphia." See <https://www.nemours.org/locations/pennsylvania/thomasjefferson.html> (stating: "Nemours collaborates with Thomas Jefferson University Hospital (TJUH) to extend advanced round-the-clock pediatric care <http://hospitals.jefferson.edu/departments-and-services/pediatrics/>) to children and families in the Philadelphia area" and "Kids are different from adults and need specialized care, so Nemours' pediatric specialists are there for families at TJUH to provide . . .").

9. At all times relevant hereto, Defendants A.I. duPont and Nemours were acting by and through their actual and/or ostensible agents, servants, and/or employees who acted within the scope of their employment when rendering care to Minor-Plaintiff at the Nemours/Alfred I. duPont Hospital for Children. These authorized actual and/or ostensible agents, servants, and/or employees include and are limited to attending physicians, resident physicians, physician assistants, nurses, technicians, or other medical staff personnel who were directly involved in the diagnosis, care, and treatment of Minor-Plaintiff at Defendant Nemours/Alfred I. duPont Hospital for Children. Defendants A.I. duPont and Nemours are therefore liable to Plaintiffs for the negligent acts and omissions of the attending physicians, resident physicians, physician assistants, technicians, or other medical staff personnel who were directly involved in the diagnosis, care, and treatment of Minor-Plaintiff at Defendant Nemours/Alfred I. duPont Hospital for Children as set forth herein.

10. At all times relevant hereto, Defendants A.I. duPont and Nemours had legal liability and responsibility for the negligent failure to act in accordance with the hospital's non-

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delegable corporate duties to its patients, including (a) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (b) a duty to select and retain only competent physicians, nurses, and others; (c) a duty to oversee all persons who practice medicine and health care within its walls as to patient care; and (d) a duty to formulate, adopt, and enforce adequate rules and policies to ensure quality care for patients.

11. A claim for negligent supervision is also asserted against A.I. duPont and Nemours, referable to and relating to these Defendants, arising out of the conduct of their actual, apparent, and/or ostensible agents, servants, and/or employees, and relating to the failures of A.I. duPont and Nemours to ensure the quality of care rendered to Minor-Plaintiff through appropriate, timely, and adequate supervision of their actual, apparent, and/or ostensible agents, servants, and/or employees, as pleaded herein.

12. At all relevant times hereto, Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., were the actual, apparent, and/or ostensible agents, servants, and/or employees of Defendant AI duPont, and were acting within the scope of their agency, master-servant, and/or employment relationship with Defendant A.I. duPont while providing medical care, orthopedic care, radiology services, interventional radiology services, pathology services, and ancillary medical services to Minor-Plaintiff, between, among other times, April, 2015 through August, 2016.

13. At all relevant times hereto, Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., were the actual, apparent, and/or ostensible agents, servants, and/or employees of Defendant Nemours, and were acting within the scope of their agency, master-servant, and/or employment relationship with Defendant Nemours while medical care,

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orthopedic care, radiology services, interventional radiology services, pathology services, and ancillary medical services to Minor-Plaintiff between, among other times, April, 2015 through August, 2016.

14. At all relevant times hereto, Defendants A.I. duPont and Nemours had a duty to supervise Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., while these individuals were acting within the scope of their agency, master-servant, and/or employment relationship with Defendants A.I. duPont and Nemours to provide medical care, orthopedic care, radiology services, interventional radiology services, pathology services, and ancillary medical services to Minor-Plaintiff between, among other times, April, 2015 through August, 2016.

15. At all relevant times hereto, Defendant A.I. duPont was acting by and through its actual, apparent, and/or ostensible agents, servants, and/or employees, including but not limited to Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., to medical care, orthopedic care, radiology services, interventional radiology services, pathology services, and ancillary medical services to Minor-Plaintiff between, among other times, April, 2015 through August, 2016.

16. At all relevant times hereto, Defendant Nemours was acting by and through its actual, apparent, and/or ostensible agents, servants, and/or employees, including but not limited to Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., to provide medical care, orthopedic care, radiology services, interventional radiology services, pathology services, and ancillary medical services to Minor-Plaintiff between, among other times, April, 2015 through August, 2016.

17. At all relevant times hereto, Defendants A.I. duPont and Nemours owed a duty to Plaintiffs to supervise its actual, apparent, and/or ostensible agents, servants, and/or employees,

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ATTORNEYS AT LAW

includingbut not limited to Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., with respect to the medical care, orthopedic care, radiology services, interventional radiology services, pathology services, and ancillary medical services provided to Minor-Plaintiff between, among other times, April, 2015 through August, 2016.

18. At all times material hereto, the supervisory duties of Defendants A.I. duPont and Nemours, with respect to its actual, apparent, and/or ostensible agents, servants, and/or employees, including Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., included the enforcement of policies and procedures for the care, evaluation, management, and supervision of patients, including Minor-Plaintiff.

JURISDICTION AND VENUE

19. Jurisdiction in this matter is proper because Defendants A.I. duPont and Nemours advertise in Philadelphia, solicit business in Philadelphia, and regularly conduct business and provide medical care in Philadelphia, including at their medical practices and outpatient facilities in Philadelphia, Pennsylvania, located at 833 Chestnut Street, Suite 300, Philadelphia, Pennsylvania 19107 and 1015 Chestnut Street, Suite 601, Philadelphia, Pennsylvania 19107.

20. Venue in this action is properly laid in Philadelphia County pursuant to Pennsylvania Rule of Civil Procedure 1006.

OPERATIVE FACTS

21. Minor-Plaintiff was born on February 9, 2004.

22. In September of 2014, Minor-Plaintiff began experiencing anterior right ankle pain.

23. In February of 2015, Minor-Plaintiff was diagnosed with an osteochondritis

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ATTORNEYS AT LAW

dissecans ("OCD") lesion of the right ankle joint and treated with a CAM boot.

24. On March 23, 2015, an MRI with contrast was performed on Minor-Plaintiff's right ankle at the Children's Hospital of Philadelphia.

25. The results of the MRI indicated "mild, ill-defined high chondral signal along the lateral articular surface of the distal tibial physis, with focal sclerosis of the subchondral bone and surrounding bone marrow edema."

26. The MRI impression stated: "Findings are most suggestive of osteochondral abnormality without evidence of instability. No joint effusion or loose intra-articular body was present."

27. On April 14, 2015, Minor-Plaintiff came under the care of Mihir M. Thacker, M.D. ("Dr. Thacker").

28. Dr. Thacker noted Minor-Plaintiff's night pain and rest pain and expressed a concern for osteoid osteoma.

29. Dr. Thacker ordered a CT scan without intravenous contrast of Minor-Plaintiff's right ankle to evaluate for possible osteoid osteoma.

30. On April 14, 2015, Mary P. Harty, M.D. ("Dr. Harty") performed a CT scan without intravenous contrast on Minor-Plaintiff's right ankle.

31. Dr. Harty interpreted the CT scan results as revealing "a small lucent lesion in the distal tibial epiphysis" correlating to "the abnormal signal intensity observed on the outside MRI," which "did not have the typical appearance of an osteoid osteoma."

32. Dr. Harty identified additional possible diagnoses as "avascular necrosis, a small vascular lesion, and intra-articular erosion."

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ATTORNEYS AT LAW

33. Dr. Harty also noted "sclerotic margins along the edges of the os trigonum with a small separated fragment between the os and talus," findings that "may be seen with os trigonum syndrome if the patient is symptomatic in this region."

34. No MRI with intravenous contrast was performed to confirm Dr. Thacker's suspicion of osteoid osteoma, as was required.

35. No biopsy was performed to confirm Dr. Thacker's suspicion of osteoid osteoma prior to treatment, as was required.

36. No further clinical work up was performed to confirm Dr. Thacker's suspicion of osteoid osteoma prior to treatment as was required.

37. Despite the fact that Minor-Plaintiff's OCD lesion did not have the typical appearance or clinical symptoms of osteoid osteoma, and without any further clinical evaluation, radiological studies or pathological evaluation, it was recommended that Minor-Plaintiff undergo a radiofrequency ablation ("RF") of the right distal tibial lesion with a simultaneous biopsy.

38. On April 21, 2015, Deborah A. Rabinowitz, M.D. ("Dr. Rabinowitz") performed a fluoroscopic, US and ExperCT-guided biopsy and radiofrequency ("RF") ablation of the right tibial lesion.

39. Before proceeding with the RF ablation, Dr. Rabinowitz biopsied the lesion area.

40. A biopsy sample was obtained using a 12-gauge biopsy needle and sent to pathology for analysis.

41. Dr. Rabinowitz proceeded with the procedure after obtaining the biopsy specimen.

42. Dr. Rabinowitz introduced a Soloist radiofrequency needle with a one centimeter

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active tip into the cavity left by the biopsy.

43. Multiple attempts were made to activate the RF probe, but “impedance was immediately met.”

44. Dr. Rabinowitz attempted to ablate the lesion with absolute ethanol, but was unsuccessful.

45. Dr. Rabinowitz then introduced a Leveen three-pronged umbrella RF needle and was able to successfully begin the RF ablation procedure.

46. Dr. Rabinowitz performed three separate ablation treatments during the RF ablation procedure.

47. During the first ablation treatment, Dr. Rabinowitz used radiofrequency energy with a maximum wattage of 8 for a total of 10.25 minutes.

48. During the second ablation treatment, Dr. Rabinowitz used radiofrequency energy with a maximum wattage of 6 for a total of 9 minutes and 30 seconds.

49. During the third ablation treatments, Dr. Rabinowitz used radiofrequency energy with maximum wattage of 8 for 6 minutes and 50 seconds.

50. After the third ablation treatment, Dr. Rabinowitz completed the RF ablation procedure.

51. A pathology report dated May 1, 2015, nine days after the RF ablation procedure, indicated that the differential diagnosis for Minor Plaintiff’s right distal tibial lesion included osteochondritis dissecans, avascular necrosis, and, less likely, os trigonum syndrome.

52. The pathology results first reported on May 1, 2015 indicated that there was “no evidence of osteoid osteoma in the biopsy material.”

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53. On June 8, 2015, Minor-Plaintiff returned to Dr. Thacker for a follow up appointment after the RF ablation procedure.

54. Dr. Thacker informed Minor-Plaintiff's parents for the first time that the pathology results obtained after the procedure did not show an osteoid osteoma and recommended physical therapy for Minor-Plaintiff's ankle.

55. On July 24, 2015, an MRI was performed on Minor-Plaintiff's right ankle at the Children's Hospital of Philadelphia.

56. MRI results indicated that the abnormality in the tibial epiphysis had increased in size compared with the prior study from March 23, 2015, demonstrating "expected changes of radiofrequency ablation," including "complex enhancing soft tissue edema" surrounding the tibiotalar joint.

57. MRI results further indicated a new signal abnormality extending across the physis into the metaphysis, "raising concern for physeal injury and risk for early bony bar formation."

58. MRI results further indicated new edema and enhancement in the navicular, "possibly related to a stress injury in the setting of altered biomechanics."

59. From July of 2015 until October of 2015, Minor-Plaintiff continued to experience severe and debilitating right ankle pain and difficulty ambulating.

60. On October 15, 2015, Minor-Plaintiff returned to Dr. Thacker for follow-up appointment.

61. Dr. Thacker noted the lesion in the distal tibial epiphysis had developed avascular necrosis related to the RF ablation procedure.

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62. Dr. Thacker also noted Minor-Plaintiff's worsening ankle pain and ambulatory dysfunction.

63. On November 16, 2015, Minor-Plaintiff underwent an open biopsy of the right distal tibia epiphyseal lesion with autograft bone grafting harvested from the right tibia and an arthrotomy of the ankle.

64. From November of 2015 until August of 2016, Minor-Plaintiff continued to experience worsening ankle pain and worsening ambulation despite medical treatments and intervention, including physical therapy and medication management.

65. On August 4, 2016, Minor-Plaintiff was diagnosed with post-RF ablation/post-traumatic arthritis of the tibiotalar joint.

66. Minor-Plaintiff continues to be non-weight bearing.

67. As a direct and proximate result of the negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, individually and through their actual and/or ostensible agents, servants, and/or employees, as more fully set forth below, Madison Rausch has suffered and will continue to suffer:

- a. autograft bone grafting;
- b. primary osteoarthritis in the right ankle and foot;
- c. post-RF ablation/post-traumatic arthritis of the tibiotalar ankle joint;
- d. idiopathic aseptic necrosis of bone in the right ankle and foot;
- e. extensive damage to the talus bone;

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- f. ankle fusion;
- g. the need for amputation of the leg and foot below the right ankle joint;
- h. traumatic arthropathy of the right ankle and foot;
- i. cystic and osteonecrotic degeneration and collapse of the right ankle and foot;
- j. missing cartilage and/or bone in the right ankle and foot;
- k. right ankle joint pain;
- l. right ankle nerve pain;
- m. permanent destruction and deformity of the right ankle joint;
- n. permanent loss of function of the right ankle joint;
- o. depression and anxiety;
- p. inability to ambulate;
- q. pain and suffering;
- r. embarrassment;
- s. humiliation;
- t. disfigurement;
- u. loss of life's pleasures;
- v. loss of future earning capacity;
- w. past medical expenses;
- x. future medical expenses; and

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y. other damages as provided by Pennsylvania law.

68. The negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, individually and through their actual and/or ostensible agents, servants, and/or employees, was a substantial factor in causing the severe and permanent injuries suffered by Minor-Plaintiff.

69. The negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, individually and through their actual and/or ostensible agents, servants, and/or employees, increased the risk of harm to Minor-Plaintiff.

70. The severe and permanent injuries suffered by Minor-Plaintiff which are the subject of this Complaint were caused solely and exclusively by the negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, individually and through their actual and/or ostensible agents, servants, and/or employees, and were due in no manner whatsoever to any act or failure to act on the part of Minor-Plaintiff, or Plaintiffs Regina Rausch or Christopher Rausch.

WHEREFORE, Plaintiffs Regina Rausch and Christopher Rausch, as Parents and Natural Guardians of Minor-Plaintiff Madison Rausch, demand damages against all Defendants herein, jointly and severally, in an amount in excess of fifty thousand (\$50,000.00) dollars and in excess of local arbitration limits, exclusive of prejudgment and post-judgment interest.

COUNT I – NEGLIGENCE

**Madison Rausch, a minor, by and through her Parents
and Natural Guardians, Regina Rausch and Christopher Rausch,
and Regina Rausch and Christopher Rausch, in their own right**

v.

**Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation,
derivatively and vicariously for the conduct of their actual, apparent,
and/or ostensible agents, servants, and/or employees,**

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Dr. Thacker and Dr. Rabinowitz

71. The preceding paragraphs of this Complaint are incorporated by reference as though fully set forth herein.

72. The negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, derivatively and vicariously, for the conduct of their actual, apparent, and/or ostensible agents, servants, and/or employees, including but not limited to Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., consists of one or more of the following:

- a. failing to properly examine, assess, monitor, and evaluate Minor-Plaintiff's OCD lesion;
- b. failing to accurately diagnose and treat Minor-Plaintiff's OCD lesion;
- c. failing to order or obtain CT scan with intravenous contrast prior to recommending an RF ablation procedure;
- d. failing to order or obtain an MRI with intravenous contrast prior to recommending an RF ablation procedure;
- e. failing to order or obtain a biopsy prior to recommending an RF ablation procedure;
- f. failing to obtain results of the biopsies performed prior to proceeding with ablation procedures;
- g. failing to consider other possible diagnoses, including but not limited to avascular necrosis and os trigonum syndrome;

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- h. failing to rule out other possible diagnoses, including but not limited to avascular necrosis and os trigonum syndrome prior to the radiofrequency ablation procedure;
- i. failing to order an ankle arthroscopy prior to the radiofrequency ablation procedure;
- j. inappropriately and erroneously attributing Minor-Plaintiff's pain to osteoid osteoma;
- k. prescribing inappropriate and ineffective treatment for Minor-Plaintiff's medical condition, namely, a radiofrequency ablation procedure;
- l. performing an unnecessary radiofrequency ablation procedure;
- m. improperly conducting a radiofrequency ablation procedure;
- n. utilizing inappropriately high wattage for a prolonged period of time during the radiofrequency ablation procedure, resulting in a large area of osteonecrosis;
- o. performing a radiofrequency ablation procedure in an overly-aggressive manner on a small lesion in a critical, weight-bearing portion of the ankle joint;
- p. recommending and performing a radiofrequency ablation procedure after before the results of the biopsy confirmed

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- the presence of an osteoid osteoma;
- q. recommending a radiofrequency ablation procedure despite the differential diagnosis of an OCD lesion, avascular necrosis, and os trigonum syndrome;
- r. recommending an unnecessary radiofrequency ablation procedure on a small lesion on a weight-bearing portion of the ankle joint;
- s. failing to minimize the risk and/or prevent Minor-Plaintiff's unnecessary and profound injuries, including, but not limited to primary osteoarthritis in the right ankle and foot, post-traumatic/ablation arthritis of the tibiotalar joint, idiopathic aseptic necrosis of unspecified bone, traumatic arthropathy of the right ankle and foot, neoplasm of unspecified behavior of bone, soft tissue, and skin, and cystic and osteonecrotic degeneration and collapse; and
- t. causing permanent and irreversible injuries and damages to Minor-Plaintiff.

73. As a direct and proximate result of the negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, derivatively and vicariously for the conduct of their actual, apparent, and/or ostensible agents, servants, and/or employees, including but not limited to Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., Minor-Plaintiff was caused to suffer the injuries described and resulting in the damages enumerated

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herein.

74. The negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, derivatively and vicariously for the conduct of their actual, apparent, and/or ostensible agents, servants, and/or employees, including but not limited to Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., was a substantial factor in causing the severe and permanent injuries suffered by Minor-Plaintiff.

75. The negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, derivatively and vicariously for the conduct of their actual, apparent, and/or ostensible agents, servants, and/or employees, including but not limited to Mihir M. Thacker, M.D., and Deborah A. Rabinowitz, M.D., increased the risk of harm to Minor-Plaintiff.

WHEREFORE, Plaintiffs Regina Rausch and Christopher Rausch, as Parents and Natural Guardians of Minor-Plaintiff Madison Rausch, demand damages against all Defendants herein, jointly and severally, in an amount in excess of fifty thousand (\$50,000.00) dollars and in excess of local arbitration limits, exclusive of prejudgment and post-judgment interest.

COUNT II – DIRECT CORPORATE NEGLIGENCE
Madison Rausch, a minor, by and through her Parents
and Natural Guardians, Regina Rausch and Christopher Rausch,
and Regina Rausch and Christopher Rausch, in their own right
v.

Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation

76. The preceding paragraphs of this Complaint are incorporated by reference as though fully set forth herein.

77. The direct corporate negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation in its non-delegable corporate duties to Madison

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Rausch, Regina Rausch and Christopher Rausch arising out of the medical evaluation, care and treatment rendered to Madison Rausch, as set forth in the predicate facts above, consisted of one or more of the following:

- a. the failure to select and retain physicians who were competent in the evaluation and diagnosis of OCD lesions;
- b. the failure to select and retain physicians who were competent in the evaluation and diagnosis of osteoid osteoma;
- c. the failure to select and retain physicians who were competent in the performance of radiofrequency ablation procedures;
- d. the failure to properly oversee and supervise all persons who practice medicine within the walls of Nemours/Alfred I. duPont Hospital for Children to ensure accurate diagnosis and appropriate treatment of OCD lesions;
- e. the failure to properly oversee and supervise all persons who practice medicine within the walls of Nemours/Alfred I. duPont Hospital for Children to ensure accurate diagnosis and appropriate treatment of osteoid osteoma;
- f. the failure to adopt and/or enforce appropriate rules, guidelines, procedures, and/or protocols to ensure the

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appropriate diagnosis of, and effective treatment for, OCD lesions;

g. the failure to adopt and/or enforce appropriate rules, guidelines, procedures, and/or protocols to ensure the appropriate diagnosis of, and effective treatment for, osteoid osteoma; and

h. the failure to adopt and/or enforce appropriate rules, guidelines, procedures, and/or protocols, to ensure the performance of appropriate radiofrequency ablation procedures.

78. As a direct and proximate result of the corporate negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, Minor-Plaintiff was caused to suffer the injuries described and resulting in the damages enumerated herein.

79. The corporate negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation was a substantial factor in causing the severe and permanent injuries suffered by Minor-Plaintiff.

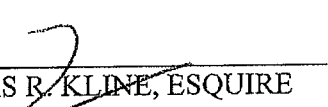
80. The corporate negligence of Defendants Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation increased the risk of harm to Minor-Plaintiff.

WHEREFORE, Plaintiffs Regina Rausch and Christopher Rausch, as Parents and Natural Guardians of Minor-Plaintiff Madison Rausch, demand damages against all Defendants herein, jointly and severally, in an amount in excess of fifty thousand (\$50,000.00) dollars and in excess of local arbitration limits, exclusive of prejudgment and post-judgment interest.

KLINE & SPECTER P.C.
ATTORNEYS AT LAW

5/25/17

KLINE & SPECTER, P.C.


THOMAS R. KLINE, ESQUIRE
AMY L. GUTH, ESQUIRE
ELIA A. ROBERTSON, ESQUIRE
Attorneys for Plaintiffs

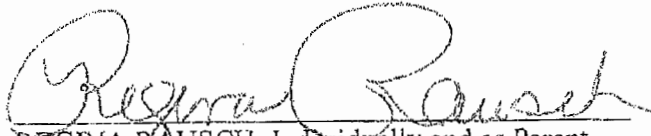
KLINE & SPECTER PC
ATTORNEYS AT LAW

VERIFICATION

We, Regina Rausch and Christopher Rausch state that we are the Parents and Natural Guardians of Madison Rausch, a minor, that we are the Plaintiffs in this action, and that the facts set forth in the Complaint are true and correct to the best of our knowledge, information and belief. We understand that this statement is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.


Date:

5/18/17


REGINA RAUSCH, Individually and as Parent
and Natural Guardian of Madison Rausch, a Minor

Date:

5/18/17


CHRISTOPHER RAUSCH, Individually and as
Parent and Natural Guardian of Madison Rausch, a
Minor

KLINE & SPECTER P.C.
ATTORNEYS AT LAW

EXHIBIT "A"

KLINE & SPECTER PC

ATTORNEYS AT LAW

By: Thomas R. Kline, Esquire
 Amy L. Guth, Esquire
 Elia A. Robertson, Esquire
 Attorney I.D. No. 28895 / 44204 / 321277
 1525 Locust Street, 19th Floor
 Philadelphia, PA 19102
 215-772-1000
 215-735-5827 (facsimile)

Attorneys for Plaintiffs

MADISON RAUSCH, a minor, by and through
 her Parents and Natural Guardians, REGINA
 RAUSCH and CHRISTOPHER RAUSCH, and
 REGINA RAUSCH and CHRISTOPHER
 RAUSCH, in their own right

COURT OF COMMON PLEAS
 PHILADELPHIA COUNTY

CIVIL ACTION -- MEDICAL
 PROFESSIONAL LIABILITY

v.

NO. 170401644

NEMOURS/ALFRED I. DUPONT
 HOSPITAL FOR CHILDREN
 THE NEMOURS FOUNDATION

CERTIFICATE OF MERIT AS TO
NEMOURS/ALFRED I. DUPONT HOSPITAL FOR CHILDREN

I, AMY GUTH, ESQUIRE, certify pursuant to Pa. R.C.P. 1042.3 that:

- An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;
- OR
- An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by other licensed professionals for whom this defendant is responsible in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and

Case ID: 170401644

KLINE & SPECTER PC

ATTORNEYS AT LAW

that such conduct was a cause in bringing about the harm;

OR

- the claim that this defendant deviated from an acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harms;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: 5/25/17

2
AMY L. GUTH, ESQUIRE

KLINE & SPECTER _{PC}
ATTORNEYS AT LAW

EXHIBIT "B"

KLINE & SPECTER PC

ATTORNEYS AT LAW

By: Thomas R. Kline, Esquire
 Amy L. Guth, Esquire
 Elia A. Robertson, Esquire
 Attorney I.D. No. 28895 / 44204 / 321277
 1525 Locust Street, 19th Floor
 Philadelphia, PA 19102
 215-772-1000
 215-735-5827 (facsimile)

Attorneys for Plaintiffs

MADISON RAUSCH, a minor, by and through
 her Parents and Natural Guardians, REGINA
 RAUSCH and CHRISTOPHER RAUSCH, and
 REGINA RAUSCH and CHRISTOPHER
 RAUSCH, in their own right

COURT OF COMMON PLEAS
 PHILADELPHIA COUNTY

CIVIL ACTION – MEDICAL
 PROFESSIONAL LIABILITY

v.

NO. 170401644

NEMOURS/ALFRED I. DUPONT
 HOSPITAL FOR CHILDREN
 THE NEMOURS FOUNDATION

**CERTIFICATE OF MERIT AS TO
 THE NEMOURS FOUNDATION**

I, AMY GUTH, ESQUIRE, certify pursuant to Pa. R.C.P. 1042.3 that:

■ An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

■ An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by other licensed professionals for whom this defendant is responsible in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and

KLINE & SPECTER _{PC}

ATTORNEYS AT LAW

that such conduct was a cause in bringing about the harm;

OR

- the claim that this defendant deviated from an acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harms;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: 5/25/17

AMY L. GUTH, ESQUIRE


CERTIFICATE OF SERVICE

I, Sara Lynn Petrosky, attorney for defendants, Nemours/Alfred I. duPont Hospital for Children and The Nemours Foundation, certify that Notice of Removal was served via electronic mail to counsel and parties listed below, on June 5, 2017, addressed as follows:

Thomas R. Kline, Esquire
Amy L. Guth, Esquire
Elia A. Robertson, Esquire
Kline & Specter, P.C.
1525 Locust Street, 19th Floor
Philadelphia, PA 19102

McCann Law, LLC

By:


Sara Lynn Petrosky, Esquire

JS 44 (Rev. 17)

CDJ**CIVIL COVER SHEET**17-R-2527
17 2527

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Madison Rausch, a minor, by and through her Parents and Natural Guardians, Regina Rausche and Christopher Rausch

(b) County of Residence of First Listed Plaintiff Bucks County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas R. Kline, Esquire/Kline & Specter, P.C.
1525 Locust Street, 19th Floor, Philadelphia, PA 19102 215-772-1000

DEFENDANTS

Nemours/Alfred I duPont Hospital for Children and The Nemours Foundation

County of Residence of First Listed Defendant Wilmington, DE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Timothy I McCann, Esquire/Sara Lynn Petrosky, Esquire
McCann Law, LLC, 1800 JFK Blvd., Suite 1812, Philadelphia, PA 215-568-1133

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause:

Medical Malpractice Case

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
> 50,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
06/05/2017

SIGNATURE OF ATTORNEY OF RECORD

JUN - 5 2017

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 177 Rice Drive, Morrisville, Pa 19067

Address of Defendant: 1600 Rockland Road, Warrington, DE 19899

Place of Accident, Incident or Transaction: Wilmington, Delaware
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐

No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) Medical Malpractice

ARBITRATION CERTIFICATION

(Check Appropriate Category)

SARA LYNN PETROSKY, counsel of record do hereby certify:
☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
☐ Relief other than monetary damages is sought.

DATE: 6-5-17

[Signature]
Attorney-at-Law

50316
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6-5-17

[Signature]
Attorney-at-Law

50316
Attorney I.D.#

CDJ

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Madison Rausch, a minor

CIVIL ACTION

v.

17 2527

Nemours / Alfred I. duPont
Hospital for children and
The Nemours Foundation

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

4-5-17

Date

Attorney-at-law

Defendants
Attorney for

215-568-1133

Telephone

215-568-1392

FAX Number

petrosky@doelawyers.com

E-Mail Address

JUN -5 2017